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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/699,102
Filing Date: October 31, 2003
Appellant(s): TAKAGI ET AL.

Karin L. Williams
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 24 January 2011 appealing from the Office action mailed 20 July 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-14 and 24-27 are pending and rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,389,473	Carmel	5/2002
6,560,655	Grambihler	5-2003
5,920,701	Miller	7-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-8, 10-14, 24, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmel et al. (US Patent No. 6,389,473), in view of Grambihler et al. (US Patent No. 6,560,655), and further in view of Miller et al. (US Patent No. 5,920,701).

As to ***claims 1 and 14***, Carmel teaches a computer-implemented method for **synchronously transferring an amount of local data from a local data storage medium** (i.e. computer 34, Figs. 2, 4; the transmitting computer, col. 2, lines 51-59) **to a remote data storage medium** (i.e. Server 36, computers 30, Figs. 2, 4; clients, col. 2, lines 51-50) **via a communications link having an available bandwidth** (i.e. Preferably, computer 34 monitors the rate of data being transmitted over each of links 60, 62, 64, etc., and allocates files 42, 44, 46, 48, etc., according to the data rates. The sizes of the files may be varied by adjusting slice durations T.sub. 1, T.sub.2, T.sub.3, etc., and a relatively greater volume of data may be transmitted through links exhibiting relatively greater data rates. The bandwidth open for transmission between computer 34 and server 36 is effectively roughly equal to a sum of the bandwidths of the plurality of open links. The number of links that are actually opened between computer 34 and server 36 may be less than or greater than the five links shown in the example of FIG. 4, depending on the available data rates of the open links, compared with the rate of data in stream 40. Preferably at least two links are opened, so that preparation and transmission of files 42, 44, 46, 48, etc., may be toggled back and forth between the links. A similar technique is preferably employed by clients 30, col. 9, lines 31-48)**, the**

local data storage medium associated with a local computer system having a local processor sequentially responsive to a plurality of local computer programs, the remote data storage medium associated with a remote computer system non-redundant of the local computer system and having a remote processor, the method comprising:

based on the currently available bandwidth (i.e. data rate, col. 5, lines 3-14; the available data rates of the open links, col. 9, lines 31-48) **and the amount of local data** (i.e. The sizes of the files, col. 9, lines 31-49), **approximating a transfer time** (i.e. On the other hand, if it is determined that the upload time for file 42 (or a subsequent file) is substantially shorter than duration T.sub. 1, the duration of subsequent files may be extended, and~or the compression ratio may be decreased, so as to take better advantage of the available bandwidth, col. 12, lines 14-17) **for the local data** (i.e. the transmitting computer opens a plurafity of links between the transmitting computer and the server, each link characterized by a respective data rate, and transmits different ones of the sequence of files over different ones of the plurafity of links. Most preferably, the transmitting computer opens the plurafity of links such that the data rates of the links taken together are sufficient to upload the sequence at the upload rate generally equal to the data rate. Further preferably, the transmitting computer monitors the data rates of the links and opens a new link in place of one of the links whose data rate is lower than a predetermined level, col. 5, lines 3-14);

determining a status of the local processor (i.e. Preferably, computer 34 monitors the rate of data being transmitted over each of links 60, 62, 64, etc., and

allocates files 42, 44, 46, 48, etc., according to the data rates. The sizes of the files may be varied by adjusting slice durations T1, 7-2, T3, etc., and a relatively greater volume of data may be transmitted through links exhibiting relatively greater data rates, col. 9, lines 31-49), **wherein the determining step includes determining if the local processor has reduced activity** (i.e. link 60 will have timed out, col. 12, lines 48-59) or **is idle** (i.e. If link 60 has not completed transmission of file 42 by the time the sixth file is ready for transmission, link 60 will have timed out, and a time-out indication will be received from step 88 (FIG. 5). In this case, link 60 is terminated and is replaced by link 70. Preferably, a "socket" opened for link 60 by a WINSOCK program running on computer 34 is simply reinitialized to open link 70. Optionally, file 42 is retransmitted over link 70 or over one of the other links, although in the case of a live broadcast transmission, it may be preferable simply to drop the file rather than send it after such a long delay, col. 12, lines 48-58);

based on the approximated transfer time (i.e. the time required to upload file 42 is measured and compared to T.sub. 1, at the same time as file 44 (slice 2) is being encoded and prepared, col. 11, lines 65 to col. 12, line 12), **the local user conditions**, **and the status of the local processor, selecting a time of day at which** (i.e. stream in real time, col. 2, line 60 to col. 3, line 5) **to transmit the local data to the remote data storage medium** (i.e. Computer 34 monitors the time codes as file 40 is transmitted, and clients 30 similarly monitor the time codes as the file is received, in order to ensure that the transmission or reception is "keeping up" with the input of the data to the computer. In the event that a lag is detected, steps are taken to increase the

data transmission or reception rate, as described further hereinbelow. For example, as shown in FIG. 3A, time intervals T1, 7-2, T3, etc., are not all equal, but rather are adjusted by computer 34 in response to the transmission rate. Alternatively or additionally, the compression level of the data is varied, as is likewise described below, so as to adjust the data streaming rate to the available bandwidth over one or more channels between computer 34 and server 36, and/or between server 36 and client 30, col. 7, lines 35-49); and

automatically arranging transfer of the local data to the remote data storage medium via the communications link at the selected time (i.e. Computer 34 monitors the time codes as file 40 is transmitted, and clients 30 similarly monitor the time codes as the file is received, in order to ensure that the transmission or reception is "keeping up" with the input of the data to the computer. In the event that a lag is detected, steps are taken to increase the data transmission or reception rate, as described further hereinbelow. For example, as shown in FIG. 3A, time intervals T.sub. 1, T.sub.2, T.sub.3, etc., are not all equal, but rather are adjusted by computer 34 in response to the transmission rate. Alternatively or additionally, the compression level of the data is varied, as is likewise described below, so as to adjust the data streaming rate to the available bandwidth over one or more channels between computer 34 and server 36, and/or between server 36 and client 30, col. 7, lines 35-49).

Carmel does not specifically state the term "evaluating local user conditions associated with transfer of the local data."

Grambihler teaches this limitation (i.e. The synchronization manager 60 may support user-scheduled automatic synchronizations, by providing a schedule dialog and wizard 64 (FIG. 2) that include user dialogs for showing and configuring logon synchronization preferences, logoff synchronization preferences, idle synchronization preferences and scheduled synchronizations. By way of example, a particular user may schedule an automatic synchronization of local and remote electronic mail messages on each logon, schedule an automatic synchronization of local files with network database files every Thursday at 11:00 PM, and schedule a synchronization of subscriptions during idle times. A set of interfaces may also be provided whereby handlers can set up schedules outside of the user interface of the synchronization manager 60, col. 9, lines 34-38).

It would have been obvious to one of ordinary skill of the art having the teaching of Carmel and Grambihler at the time the invention was made to modify the system of Carmel to include the limitations as taught by Grambihler. One of ordinary skill in the art would be motivated to make this combination in order to provide a schedule dialog and wizard that include user dialogs for showing and configuring logon synchronization preferences, logoff synchronization preferences, idle synchronization preferences and scheduled synchronizations in view of Grambihler, as doing so would give the added benefit of providing an improved method and system for managing the synchronization

of local and remote data by multiple applications and system components as taught by Grambihler (See TECHNICAL FIELD).

Neither Carmel nor Grambihler explicitly teaches “selecting a time.”

Miller teaches this limitation in Fig. 7 and Table in column 7.

It would have been obvious to one of ordinary skill of the art having the teaching of Carmel, Grambihler and Miller at the time the invention was made to modify the system of Carmel, Grambihler to include the limitations as taught by Miller. One of ordinary skill in the art would be motivated to make this combination in order to schedule for data transmission from the content sources to the replicated servers in view of Miller (col. 6, lines 8-34), as doing so would give the added benefit of managing how the content can be distributed by many content providers so that the distributions do not overwhelm network bandwidth, and how can multicast addresses be allocated without conflict among the various content sources as taught by Miller (col. 1, lines 20-49).

As per ***claim 2***, Carmel teaches a computer-readable medium encoded with a program which, when loaded into a processor, implements the method of claim 1, the limitations of which are repeated as Claim 2 (See Figs. 2,4).

As per ***claim 3***, Carmel teaches the computer-readable storage medium according to claim 2, wherein the computer program comprises one of the plurality of local computer-program, and the processor comprise the local processor (See Figs. 2, 4).

As per ***claim 4***, Carmel teaches the computer-readable storage medium according to claim 2, wherein the processor comprises the remote processor (See Figs. 2,4).

As per ***claim 5***, Carmel teaches the computer-implemented method according to claim 1, further comprising: automatically transmitting the local data to the remote data storage medium at the selected time (i.e. Computer 34 monitors the time codes as file is transmitted, and clients 30 similarly monitor the time codes as the file is received, in order to ensure that the transmission or reception is "keeping up" with the input of the data to the computer. In the event that a lag is detected, steps are taken to increase the data transmission or reception rate, as described further hereinbelow. For example, as shown in FIG. 3A, time intervals T.sub. 1, T.sub.2, T.sub.3, etc., are not all equal, but rather are adjusted by computer 34 in response to the transmission rate. Alternatively or additionally, the compression level of the data is varied, as is likewise described below, so as to adjust the data streaming rate to the available bandwidth over one or more channels between computer 34 and server 36, and/or between server 36 and client 30, col. 7, lines 35-49).

As per ***claim 6***, Carmel teaches the computer-implemented method according to claim 1, further comprising: automatically arranging for interruption of transfer of the local data bases on the status of the local processor (i.e. Computer 34 monitors the time codes as file 40 is transmitted, and clients 30 similarly monitor the time codes as the file is received, in order to ensure that the transmission or reception is "keeping up" with the input of the data to the computer. In the event that a lag is detected, steps are taken to increase the data transmission or reception rate, as described further hereinbelow. For example, as shown in FIG. 3A, time intervals T.sub. 1, T.sub.2, T.sub.3, etc., are not all equal but rather are adjusted by computer 34 in response to the transmission rate. Alternatively or additionally, the compression level of the data is varied, as is likewise described below, so as to adjust the data streaming rate to the available bandwidth one or more channels between computer 34 and server 36, and/or between server 36 and client 30, col. 7, lines 35-49).

As per ***claim 7***, Carmel teaches the computer-implemented method according to claim 6, further comprising: automatically interrupting transfer of the local data based on the status of the local processor (i.e. If link 60 has not completed transmission of file 42 by the time the sixth file is ready for transmission, link 60 will have timed out, and a time-out indication will be received from step 88 (FIG. 5). In this case, link 60 is terminated and is replaced by link 70. Preferably, a "socket" opened for link 60 by a WINSOCK program running on computer 34 is simply reinitialized to open link 70.

Optionally, file 42 is retransmitted over rink 70 or over one of the other links, although in the case of a five broadcast transmission, it may be preferable simply to drop the file rather than send it after such a long delay, col. 12, lines 48-58).

As per ***claim 8***, Carmel teaches the computer-implemented method according to claim 6, wherein the status of the local processor is inferred from one of: status of a display device, a status of a memory; a configured processor utilization; and a time since a last interactive use of the local computer system (i.e. If link 60 has not completed transmission of file 42 by the time the sixth file is ready for transmission, link 60 will have timed out, and a time-out indication will be received from step 88 (FIG. 5). In this case, link 60 is terminated and is replaced by link 70. Preferably, a "socket" opened for link 60 by a WINSOCK program running on computer 34 is simply reinitialized to open link 70. Optionally, file 42 is retransmitted over link 70 or over one of the other links, although in the case of a live broadcast transmission, it may be preferable simply to drop the file rather than send it after such a long delay, col. 12, lines 48-58).

As per ***claim 10***, Carmel teaches the computer-implemented method according to claim 6, further comprising: after automatically arranging for interruption of transfer of the local data, automatically arranging for resumption of transfer of the local data based on the status of the local processor (i.e. If link 60 has not completed transmission of file 42 by the time the sixth file is ready for transmission, link 60 will have timed out, and a

time-out indication will be received from step 88 (FIG. 5). In this case, link 60 is terminated and is replaced by link 70. Preferably, a "socket" opened for link 60 by a WINSOCK program running on computer 34 is simply reinitialized to open link 70. Optionally, file 42 is retransmitted over link 70 or over one of the other links, although in the case of a live broadcast transmission, it may be preferable simply to drop the file rather than send it after such a long delay, col. 12, lines 48-58).

As per ***claim 11***, Carmel teaches the computer-implemented method according to claim 10, further comprising: automatically resuming transfer of the local data based on the status of the local processor (i.e. If link 60 has not completed transmission of file 42 by the time the sixth file is ready for transmission, link 60 will have timed out, and a time-out indication will be received from step 88 (FIG. 5). In this case, link 60 is terminated and is replaced by link 70. Preferably, a "socket" opened for link 60 by a WINSOCK program running on computer 34 is simply reinitialized to open link 70. Optionally, file 42 is retransmitted over link 70 or over one of the other links, although in the case of a five broadcast transmission, it may be preferable simply to drop the file rather than send it after such a long delay, col. 12, lines 48-58).

As per ***claim 12***, Carmel teaches the computer-implemented method according to claim 1, wherein the local user conditions comprise one of: a location of the local data; a preferred transfer time; a file extension associated with the local data; and a

status of the communication link (i.e. the rate of data being transmitted over each of links 60, 62, 64, col. 9, lines 31-48; link 60 will have timed out, col. 12, lines 48-59).

As per ***claim 13***, Carmel teaches the computer-implemented method according to claim 1, wherein the remote processor and the local processor are under independent control (See Figs. 2, 4).

As per ***claim 24***, Carmel teaches the computer-implemented method according to claim 1, wherein the status is determined by direct monitoring of the local processor (i.e. Preferably, computer 34 monitors the rate of data being transmitted over each of links 60, 62, 64, etc., and allocates files 42, 44, 46, 48, etc., according to the data rates. The sizes of the files may be varied by adjusting slice durations T1, T2, T3, etc., and a relatively greater volume of data may be transmitted through links exhibiting relatively greater data rates, col. 9, lines 31-49).

As per ***claim 25***, Carmel teaches the computer-implemented method according to claim 1, wherein the status is inferred by monitoring a status of other programs associated with the local computer-system (i.e. If link 60 has not completed transmission of file 42 by the time the sixth file is ready for transmission, link 60 will have timed out, and a time-out indication will be received from step 88 (FIG. 5). In this case, link 60 is terminated and is replaced by link 70. Preferably, a “socket” opened for link 60 by a WINSOCK program running on computer 34 is simply reinitialized to open

link 70. Optionally, file 42 is retransmitted over rink 70 or over one of the other links, although in the case of a five broadcast transmission, it may be preferable simply to drop the file rather than send it after such a long delay, col. 12, lines 48-58).

2. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carmel et al. (US Patent No. 6,389,473), in view of Grambihler et al. (US Patent No. 6,560,655), and Miller et al. (US Patent No. 5,920,701), as applied to claims above, and further in view of Roberts et al. (US Patent No. 6,920,110).

As per ***claim 9***, Carmel implicitly teaches the status of the display device comprises activation of a screen-saver as link 60 will have timed out, col. 12, lines 48-59. Miller implicitly teaches the status of the display device comprises activation of a screen-saver as if the transmission was unsuccessful, col. 3, lines 1-23.

Grambihler implicitly teaches the status of the display device comprises activation of a screen-saver as idle in col. 9, lines 34-38.

Carmel, Grambihler, Miller do not clearly state the term “screen saver.”

Roberts teaches this limitation (i.e. The relatively low level of actual network bandwidth utilization shown from T.sub.5 through T.sub.8 (FIG. 4) is sometimes referred to as “network idle.” This concept differs from “machine idle,” which occurs when a PC

user is not currently using the keyboard or mouse. If the machine remains idle for a period of time, a screen saver may be invoked, col. 7, line 59 to col. 8, line 12).

It would have been obvious to one of ordinary skill of the art having the teaching of Carmel, Grambihler, Miller, Roberts at the time the invention was made to modify the system of Carmel, Grambihler, Miller to include the limitations as taught by Roberts. One of ordinary skill in the art would be motivated to make this combination in order to the transfer of a set of data over a network at a time when the network utilization is relatively low in view of Roberts (col. 7, line 59 to col. 8, line 12), as doing so would give the added benefit of maintaining equally applicable to uploads from the client to the server or other communication of data between computers as taught by Roberts (col. 7, line 59 to col. 8, line 12).

3. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carmel et al. (US Patent No. 6,389,473), in view of Grambihler et al. (US Patent No. 6,560,655), and Miller et al. (US Patent No. 5,920,701), as applied to claims above, and further in view of Knox et al. (US Pub No. 20020083124).

Carmel, Grambihler, Miller do not specifically teach that the local user conditions comprise file extensions of local data.

Knox, however, teaches that local data has file extensions (i.e. In this step, the process 40 can execute a computer process that is capable of analyzing the contents of the uploaded data file. For example, the file structure of the uploaded data file may be known to the process and may be identified to that process by the file extension associate with the uploaded file. For example, a *.rm file indicates a file format compatible with the Real Media file structure. The process 40 can include logic that understands the file structure of the *.rm format. The file structure typically includes information regarding the title of the file, the size of the file, an associated codec, bit rate and other characteristics of that file, [0043]).

It would have been obvious to one of ordinary skill of the art having the teaching of Carmel, Grambihler, Miller, Knox at the time the invention was made to modify the system of Carmel, Grambihler, Miller to include the limitations as taught by Knox. One of ordinary skill in the art would be motivated to make this combination in order analyze the contents of the uploaded data file in view of Knox ([0043]), as doing so would give the added benefit of allowing the user to set or adjust meta-data characteristics of the uploaded media asset, and a distribution process is capable of replicating the media asset and distributing the replicated versions of that asset across the data network as taught by Knox (Abstract).

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carmel et al. (US Patent No. 6,389,473), in view of Grambihler et al. (US Patent No. 6,560,655),

Miller et al. (US Patent No. 5,920,701), and Knox et al. (US Pub No. 20020083124) as applied to claims above, and further in view of Quinet et al. (US Pub No. 20050240940).

Carmel, Grambihler, Miller and Knox do not teach local data having a first file extension is transferred immediately and wherein local data having a second file extension is transferred at a later time of day.

Quinet teaches the computer-implemented method according to claim 26, wherein local data having a first file extension is transferred immediately and wherein local data having a second file extension is transferred at a later time of day (i.e. [0065] The object does not have a priority yet, but the file extension looks like HTML (".HTML," ".HTM") or XML (".XML") or looks like a directory index (ends "/"). Such a priority assignment ensures that a HTML page requested from the bookmarks or typed in directly will be requested with a high priority).

It would have been obvious to one of ordinary skill of the art having the teaching of Carmel, Grambihler, Miller, Knox, Quinet at the time the invention was made to modify the system of Carmel, Grambihler, Miller, Knox to include the limitations as taught by Quinet. One of ordinary skill in the art would be motivated to make this combination in order to assign an initial priority to an requested object in view of Quinet (Abstract), as doing so would give the added benefit of controlling in a communications

network an object transfer from a first network component via the intermediate component to a second network component as taught by Quinet (Abstract).

(10) Response to Argument

With respect to the initial matter of Takeuchi as raised by Appellant, Takeuchi is not relied upon in rejecting the pending claims.

Claims 1 and 14

With respect to the allegation that Carmel does not teach selecting a time of day, it is clear that the concept of "real time streaming" refers to a time of day: "now." However, as mentioned by Appellant, Carmel fleshes out the broad "now" in to time intervals T_1, T_2, T_3, etc. These time intervals, however, clearly have definite start times that, when modified by Miller and Grambihler, are based on the approximated transfer time, the local user conditions and the status of the local processor as claimed. That is, the particular time at which the T_2 segment starts is dependent on the length of the T_1 segment, the particular time at which the T_3 segment starts is dependent on the lengths of the T_1 and T_2 segments, etc.

The calculation of the time segments, as taught by the combination of Carmel, Miller and Grambihler, is based on the approximated transfer time, the local user conditions, and the status of the processor. As such, even though the T_1 segment starts "now" when viewed from real-time, the timing segment is nevertheless based on a selection as claimed. However, even were the timing of the T_1 segment not calculated at all, it is clear that the end time of the T_1 segment *is* calculated, and as such, the

specific start times of the T_2, T_3, and all following segments, during which local data is clearly transferred to the remote storage medium as claimed, are selected based on the claimed variables.

Grambihler teaches evaluating local conditions with the transfer of local data, i.e., that a transfer has been requested. The phrase "local user conditions" as used in the claims appears to be broad enough to encompass the notion that the local user has the condition of wanting to transfer the local data to remote storage.

With respect to selecting a time, Carmel's real time transmission is not a pure real-time. That is, the time slices of Carmel, by varying based on the conditions, status and approximated time, schedule around expected problems as taught by Miller. That the time frames of the slices of Carmel may be on a shorter scale is immaterial: clearly, a slice of time starting at a particular time inherently has a selected time of day.

Claim 26

With respect to the local user conditions comprising file extensions of the local data, Knox teaches that file extensions can signify the presence of meta-data, the transfer of which along with the data itself is advantageous to eventual users of the remote data.

Claim 27

As an initial matter, it appears that an inadvertent error was made in the heading of the rejection of Claim 27, where the Knox reference was omitted. It is clear from the text of the rejection, however, that the Knox reference was part of the rejection under 35 U.S.C. § 103 (the stated "as applied to claims above" were applied along with Knox;

Knox was used in the body of the rejection), and that therefore Examiner's clarification that Claim 27 is rejected in view of Knox along with Carmel, Grambihler and Miller, and further in view of Quinet, does not constitute new grounds of rejection.

With respect to the transfer of data with different file extensions at different times, it is clear that the prioritization of specific data objects will result in their times being different, and that data with a .html file extension will have priority over an image-type file extension as taught by Quinet in the real-time transmission of Carmel so as to better be able to serve user expectations as taught by Quinet.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/William Spieler/
Patent Examiner, Art Unit 2159

Conferees:

/John R. Cottingham/
Supervisory Patent Examiner, Art Unit 2167

/James Trujillo/
Supervisory Patent Examiner, Art Unit 2159